

Subject: RESPONSIBILITY AND PROCEDURES FOR REPORTING
MISCONDUCT AND CRIMINAL OFFENSES

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5-10-00 PURPOSE

This chapter sets forth Department of Health and Human Services (BBS) policies, procedures, and assignments of responsibility for reporting allegations of:

- A. Improper conduct not related to loyalty and security matters; and,
- B. Criminal offenses against the United States.

5-10-10 DEFINITIONS

- A. As used in this chapter, "improper conduct" include! the performance of one's assigned duties in a manner which contributes to abuse or waste of the taxpayers' money, which threatens the integrity of **HHS** programs and operations, which is contrary to the standards of conduct established by the appropriate authority, or which constitutes a prohibited personnel practice (see 5-10-50). The term does not include criminal violations of law.
- B. As used in this chapter, "criminal offenses" include, but are not limited to, bribery; fraud; perjury; conflict of interest; embezzlement; misuse of funds, equipment, and facilities; and other violations of law by Government officers and employees, grantees, contractors, and other persons doing business with the Department.

- C. As used in this chapter, "administrative offenses" are those incidents of improper conduct which can and should be handled directly by supervisors with the assistance of their servicing personnel office. A list of administrative offenses is shown in Exhibit 5-10-A.
- D. This chapter does not cover procedures for handling of matters related to loyalty and security, employee grievances, **equal** employment opportunity complaints, including sexual harassment complaints, classification appeals, or other matters for which a formal Governmentwide review system has been established by the Federal Government.

5-10-20 **GENERAL** POLICY

- A. In order to provide objective uniform procedures for the handling of allegations of wrongdoing covered by this chapter, it shall be the responsibility of the Office of Inspector General (OIG) to investigate allegations of wrongdoing reported to the **OIG** or to refer such allegations to the appropriate operating division (OPDIV), the appropriate staff division (STAFFDIV), to the Assistant Secretary for Personnel Administration (**ASPER**), to another law enforcement agency, or to another appropriate authority.
- B. Every employee, supervisor, and management official shall report any criminal offenses immediately to the OIG which he/she receives, unless it is clear to him/her that the allegation is frivolous and has no basis in fact.
- c. Every employee, supervisor, and management official shall cooperate with the OIG during the conduct of any investigation.
- D. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to a supervisor, management official, or the OIG, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

5-10-30 PROCEDURES FOR REPORTING ALLEGATIONS OF IMPROPER CONDUCT

A. Submission of Allegations

Allegations of improper conduct (non-criminal) should normally be submitted in writing by an employee to his/her supervisor, a higher management official within the employee's organization, or the OIG. Allegations should, **where** possible, be supported by any available documentation. Oral reports are, however, acceptable, and may be necessary if immediate action is required.

B. Reporting of Allegations

Supervisors and management officials shall report any allegations of improper conduct (non-criminal) received or observed to the next highest Department official within their organization. The head of each OPDIV or STAFFDIV shall insure that all allegations of improper conduct, other than those that are clearly frivolous and have no basis in fact, are either investigated by the responsible component within that agency **or** referred to the OIG for its consideration of the appropriate action to take.

C. Investigation of Allegations

1. Allegations of improper conduct (non-criminal) received by the OIG will be reviewed promptly and a decision made as to whether an investigation is warranted. Normally, the administrative offenses shown in Exhibit 5-10-A will be handled by the employee's supervisor. If an investigation is warranted, the OIG will determine whether the investigation is to be conducted by the OIG, by an OPDIV, STAFFDIV, by **ASPER** or by other appropriate authority, based upon the following considerations:
 - a. An OPDIV or STAFFDIV may conduct a non-criminal investigation within its own organization when the OIG determines that the OPDIV or STAFFDIV will conduct the investigation in a fair and impartial manner.
 - b. The **ASPER** may conduct an investigation that the OIG determines involves prohibited personnel practices or non-criminal violations **of**

established standards of conduct. The **ASPER** may also conduct investigations of **cases** directly referred to the Department by the Office of Special Counsel (OSC).

- c. The OIG may conduct an investigation **of** any allegation of misconduct received from any source.
2. Whenever the OIG determines that there is unreasonable delay by an OPDIV or STAFFDIV in the handling of an allegation of improper conduct or that the head of the OPDIV or STAFFDIV took an inappropriate action in regard to the allegation, the OIG may assume responsibility for completing the investigation.

D. Action on Investigation Reports

1. Where an investigation is conducted by an OPDIV or STAFFDIV, the head of the OPDIV or STAFFDIV will proceed as he/she determines is necessary based upon the findings of the investigation. He/she will inform, where appropriate, the Inspector General (IG), the Secretary, or other Department officials of his/her findings. Such reports will be in writing.
2. Where an investigation is conducted by the OIG, the IG will determine if the findings of the investigation *require* additional action. Where appropriate, he/she will inform the head of the OPDIV or STAFFDIV, the Secretary, or other Department officials of his/her findings. Such reports will be *in* writing.
3. Where an investigation is conducted by **ASPER**, the Assistant Secretary will take whatever action he/she determines is necessary based upon the findings of the investigation, or will refer the findings to the appropriate authority for such action. Where appropriate, he/she will inform the IG, the Secretary, or other Department officials of his/her findings, and request further action be taken as warranted by the findings. Such reports will **be** in writing.

E. Record-Keeping

1. The OPDIV or STAFFDIV **head**, **ASPER**, or the IG shall also insure that a file is maintained on each investigation which is initiated. The investigation file shall contain complete documentary material showing in detail: the basis for the investigation, the extent of

the investigation, persons interviewed and information furnished, records reviewed and information obtained, and any other material pertinent to the investigation. The file shall also contain a record of the action taken. Files so maintained by an OPDIV or STAFFDIV, or **ASPER**, shall be **made** available to the OIG upon request.

2. Investigative files shall be retained by the office which conducted the investigation for a period of 10 years from the date of its completion.

5-10-40 PROCEDURES FOR REPORTING ALLEGATIONS OF CRIMINAL OFFENSES

A. **Cooperation** With the Attorney General

The Department will cooperate fully with the Attorney General (AG) and his/her staff in reporting, conducting, and assisting with investigations of alleged criminal offenses against the United States. Through the Deputy Inspector General for Investigations (**DIGI**), **OIG**, the Department will promptly report to the AG alleged violations of law by its employees and agents.

B. **Authority of Office of Investigations**

1. The **DIGI**, who heads the Office of Investigations (01), has been designated by the Secretary and the IG, as prescribed by Appendix 3 of title 5, United States Code, to:
 - a. Provide liaison for the Department with the AG and his/her staff on all investigative matters; and,
 - b. Conduct investigations of alleged cases of criminal wrongdoing by **HHS** employees, grantees, contractors, and other persons doing business with the Department.
2. The authority of 01 includes authority to undertake **or authorize** ~~other~~ to undertake such investigations without the ~~prior~~ approval of higher officials. The authority does not include investigations of matters **related** to loyalty and security, employee grievances, **equal** employment opportunity complaints, including sexual harassment, employee civil rights, tort claims, and similar administrative activities that are under the jurisdiction of other **HHS** offices.

C. **Reporting Violations of Title 18 U.S.C. (Criminal Offenses) by HHS Employees, Grantees, Contractors, and Others Doing Business with the Department**

1. Any **HHS** employee who has knowledge of possible criminal offenses against the United States by another **HHS** employee, grantee, contractor, or any other person doing business with the Department, shall immediately report such information directly to the OIG.
2. Supervisors shall immediately report any allegations or complaints of criminal offenses received, or observations of criminal conduct, directly to the OIG. The head of each OPDIV or STAFFDIV shall insure that no other action will be taken in regard to the subject of the complaint, without first consulting with **OIG**. The head of each OPDIV or STAFFDIV shall also insure that all such allegations which are received are referred to the OIG.
3. Allegations or complaints should normally be made in writing and include any available documentation. This method of reporting enables the **OIG** to make an informed decision on the handling of the alleged violation, once it is received. Oral reports, however, are acceptable if it is believed that immediate action is required by the OIG. The OI will determine if a written referral report will be required.
4. Ordinarily, allegations or complaints should be reported to the nearest OI field office. (See Exhibit 5-10-B for the listing and addresses of these offices.) However, when such allegations concern an **HHS** activity that is national in scope, involves senior **HHS** officials, or involves personnel of the OIG, they should be reported directly to the:

Deputy Inspector General for Investigations
Department of Health and Human Services
Room 5459, Wilbur **J.** Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

5. When **OI** has reasonable grounds to believe an **HHS** officer or employee has committed a criminal offense, it shall promptly notify the United States Attorney for the district in which the alleged violation occurred; the Criminal Division, Department of Justice; or the Federal Bureau of Investigation (FBI).

D. Complaints by Private Citizens

Any person desiring to bring to the attention of OIG any complaint which he/she considers warrants such attention may write to the appropriate OI field office (as shown in Exhibit 5-10-B), or to:

Deputy Inspector General for Investigations
Department of Health and Human Services
Room 5459, Wilbur J. Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

E. Administrative Actions

1. Allegations Regarding Employees

- a. Where prosecutive action has been declined and further investigation of the criminal aspects of an allegation will not be made, OI shall furnish to appropriate HHS officials, where administrative action may be appropriate, such information as is available, provided this transfer of information would not violate a defense classification, Rule 6(e) F.R.Cr.P., the Privacy Act or other laws.
- b. Where OI conducts an investigation and determines that the case involves issues which are the responsibility of an OPDIV or STAFFDIV, the case shall be referred to the appropriate OPDIV or STAFFDIV for further action. The Department official who takes final action shall report the final disposition of the case to OI, to complete the file in the matter.
- c. When a criminal investigation is ongoing and administrative action is being considered apart from the criminal investigation, the official considering the administrative action must consult with OI before implementing such action. The OI will assess what effect the proposed administrative action might have on the criminal investigation and advise the official accordingly.

2. Allegations Regarding Non-Employees

Whenever OI informs an HHS official that it has initiated an investigation of a grantee, contractor, an employee of a grantee or contractor, or an individual

doing business with the Department, the HHS official may wish to initiate administrative actions. This is a programmatic decision and must be made in the best interests of the Government and the individuals concerned. Program decisions to suspend, limit, or terminate funds must be made based upon facts available, impact on the program, potential loss to the Government, and judgment as to the validity of the allegation. Officials contemplating administrative action in a case being investigated criminally will consult with OI before taking such action, to determine what effect the action might have on such investigation.

3. Investigative Reports

Reports by the FBI are the property of the FBI and are loaned to the Department. Reports by OI are the property of OIG and are loaned to components of the Department for official use only. Neither the FBI nor OIG reports nor their contents may be distributed outside the component to which loaned. All reports of investigation must be returned to OI when the office receiving the reports has completed all action and has no further need to retain the reports. All OI and FBI reports should be stored in a secured file or safe while in the possession of the component.

F. Procedure for Requesting Investigative Assistance

Whenever the head of an OPDIV or STAFFDIV requires investigative assistance on suspected criminal activity related to his/her organization, he/she shall request the DIGI to provide such assistance. Regional officials and heads of HHS field installations shall send their requests for investigative assistance to the Regional Inspector General for Investigations (RIGI) for the area in which the investigation should be conducted. (See Exhibit 5-10-B.)

G. Office of Investigations Field Offices

The OI field offices perform the investigative services in the geographic areas indicated. Each field office is headed by a RIGI who is under the line direction of the Assistant Inspector General for Criminal Investigations. Communications should be addressed to the RIGI at the appropriate location listed in Exhibit 5-10-B. In a

situation that requires immediate action, 01 field offices may be contacted by telephone. The field office telephone numbers are also shown in Exhibit 5-10-B.

5-10-50 PROHIBITION OF REPRISALS AGAINST EMPLOYEES FOR PROVIDING INFORMATION

- A. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or providing any information pursuant to this chapter. If the complaint was made or the information was disclosed with the knowledge that it was false, or with willful disregard for its truth or falsity, any action taken against the employee based on those reasons would not constitute a reprisal action.
- B. No employee shall subject another employee to harassment nor take any action against that employee as a reprisal for making a complaint or providing any information pursuant to this chapter.
- C. Any employee who believes that he/she has been threatened with a personnel action or any other action, or who has been harassed or harmed by any action as a reprisal for having made a complaint or provided information pursuant to this chapter, may request the OIG to review his/her complaint about such reprisal. Whenever the OIG has reason to believe that the complaint may be true, it may, depending on the circumstances, decide to conduct the investigation or to refer the matter to OSC or **ASPER** for appropriate action. A more direct option an employee may exercise is filing a complaint with the OSC. The OSC has the ability to seek a stay **of** any agency personnel action from the Merit Systems Protection Board.